Supreme Court, U.S.
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No. _____

In The
Supreme Court of the United States

LANCE DAWSON,

Petitioner,

v.

THOMAS NEWMAN, JR., Madison County Superior Court Judge, in his individual capacity,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

PETITION FOR A WRIT OF CERTIORARI

March 6, 2006

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QUESTIONS PRESENTED

I. Whether the expansive interpretation of judicial immunity by the Seventh Circuit Court of Appeals is contrary to the functional approach required under *Forrester v. White*, 484 U.S. 219 (1988).

II. Whether judicial immunity should include as a "judicial act" the mailing of a trial court's order directing the release of an incarcerated inmate.

LIST OF PARTIES

The parties to the prior proceeding consist of Petitioner Lance Dawson, Respondent Judge Thomas Newman, Jr., and Defendants Arthur Hegewald, Betty Weist, Victoria Fafata, and Kathy Stoops-Wright. Because Petitioner, as detailed *infra*, only seeks to review the Seventh Circuit Court of Appeals' judgment as to Respondent, the remaining defendants are not parties to this petition for a writ of *certiorari*.

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The Petitioner Lance Dawson respectfully prays that a writ of *certiorari* issue to review the judgment and opinion of the United States Court of Appeals for the Seventh Circuit, entered in the above-entitled proceeding on August 18, 2005, with petition for rehearing and rehearing *en banc* denied December 6, 2005.

OPINIONS BELOW

The opinion of the Seventh Circuit Court of Appeals is reported at 419 F.3d 656 and is reprinted in the appendix hereto, p. A1 ("App. A1"), *infra*.

JURISDICTION

The panel decision of the Seventh Circuit Court of Appeals was entered on August 18, 2005. The decision of the Court of Appeals denying Petitioner's petition for rehearing and rehearing *en banc* was entered on December 6, 2005. This Court has jurisdiction to review the judgment of the Seventh Circuit under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The text of 42 U.S.C. § 1983 and relevant Indiana Code provision § 35-38-1-16 are reproduced verbatim in the appendix, App. A25, *infra*.

STATEMENT OF THE CASE

Judge Newman failed to provide notice to the department of correction of his order calling for Lance Dawson's release, as required by Ind. Code § 35-38-1-16. The relevant facts of this case are contained in Petitioner's Second Amended Complaint (App. A26, *infra*), and must be accepted as true for purposes of review by this Court. *Sutton v. United Airlines, Inc.*, 527 U.S. 471, 475 (1999).

This case began in 1990 when Lance Dawson pleaded guilty to certain criminal charges. He was thereafter sentenced to six years, all of which were suspended, and was placed on three years probation. In September of 1992, Dawson's probation officer filed a notice of probation violation with the court alleging that Dawson failed to comply with the terms of his probation. After several delays, on June 12, 2000, approximately ten years after being sentenced, the State filed an amended notice of probation violation, alleging that Dawson's probationary period had been tolled by the 1992 filing of the notice of probation violation. The amended notice further alleged probation violations that occurred in November 1998 and in May 2000. App. A30 (Second Amended Complaint, ¶¶ 16-18).

In a hearing held on October 23, 2000, Respondent Madison County Superior Court Judge Thomas Newman Jr., revoked Dawson's probation and sentenced Dawson to six (6) years. Dawson filed a notice of appeal and was assigned a public defender to represent him on the appeal. Beyond the public defender's initial contact to inform Dawson that he now had appointed counsel for his appeal, Dawson never spoke to his public defender. App. A30-31 (Second Amended Complaint, ¶¶ 19-23).

On Ju 18, 2001, the Indiana Court of Appeals unanimously held in *Dawson v. State*, 751 N.E.2d 812 (Ind. Ct. App. 2001) that the trial court improperly revoked Dawson's probation and remanded the case to the trial court. A docket entry dated July 18, 2001, by Respondent Judge Newman ordered Dawson released from the Department of Correction ("DOC"). Even though the criminal docket shows that Respondent Newman ordered Dawson's release, he failed to take the necessary administrative steps to ensure Dawson's release from DOC. There is no documentation of any order being sent to the DOC, or to any parties. The Madison County Clerk also did not send the docketed order, despite such a duty, to the parties, or to the DOC to notify the agency that it should release Dawson. App. A31-32 (Second Amended Complaint, ¶¶ 24-30).

There was, however, some communication between the Court and the DOC. The same day the Court of Appeals issued its decision reversing Dawson's probation revocation, and the same day Respondent ordered Dawson released, Respondent's court sent a fax to the DOC which included the appellate decision. Thereafter, emails were sent between DOC employees indicating that Dawson was going to be released after his successful appeal. App. A32 (Second Amended Complaint, ¶¶ 31-33).

On July 26, 2001, Dawson was transferred back to DOC's Plainfield, IN facility from a Kentucky prison, to which he was sent due to jail overcrowding in Indiana. The inter-facility transfer report indicates that Dawson was being transferred back to Indiana because of "Possible Release on Appeal." Thus, the DOC had notice that Dawson was to be released immediately based upon the July 18, 2001 decision of the Indiana Court of Appeals.

Believing that his appeal was still pending, and having not been informed of the Court of Appeals' decision, Dawson never questioned his incarceration. Despite the Indiana Court of Appeals' ruling and Respondent Judge Newman's order, Dawson remained incarcerated up to and including September 6, 2002 – over a year after his ordered release. App. A32 (Second Amended Complaint, ¶¶ 34-38).

Upon his release, Dawson reported to the parole office in Anderson, Indiana, as directed by the DOC, and specifically spoke with Betty Weist, his parole supervisor. Petitioner informed her soon after his first visit that the Court of Appeals had ordered his release in 2001. Weist then contacted the court staff of Respondent Judge Newman to inform them of this decision, but she received no further instructions from the court with regard to her responsibility and duties to supervise Dawson under the standard conditions of parole. She also asked for directions from her supervisor, Victoria Fafata, and was told to continue with parole supervision. Petitioner Dawson was unable to persuade Weist that he was not to be supervised on parole, and that the Madison County Superior Court should have taken corrective steps to insure that he should not have been incarcerated beyond the Court of Appeals' decision of July 18, 2001. App. A33 (Second Amended Complaint, ¶¶ 39-41).

Soon thereafter, Petitioner's counsel, Michael K. Sutherlin, contacted Weist and her supervisor, Fafata, to learn more about the circumstances of Dawson's illegal and unlawful imprisonment, and the reasons why he was still under DOC supervision. After initially providing some general information, Weist refused to cooperate without permission and authority from her supervisors. When the office of Plaintiff's counsel contacted Fafata, she refused

to meet with Plaintiff's counsel to provide additional information and referred the matter to her supervisor, Arthur Hegewald. On or about September 10, 2003, Hegewald finally returned several phone messages and indicated that he was not going to meet with Petitioner's counsel, and that it did not matter because Dawson's parole would terminate in the near future anyway. App. A33-34 (Second Amended Complaint, ¶¶ 42-46).

Petitioner Lance Dawson filed his second amended complaint in this matter on April 8, 2004 in the United States District Court for the Southern District of Indiana, alleging violations of his federal and state constitutional rights. Petitioner's federal claims were brought pursuant to 42 U.S.C. § 1983. The district court had jurisdiction over these federal claims pursuant to 28 U.S.C. § 1331 and 1343(a)(3), as Petitioner's suit sought redress for violations of his federal constitutional rights.

On April 30, 2004, Respondent Newman and other defendants (who are not parties to this petition for *certiorari*) filed their motion to dismiss Petitioner's second amended complaint.[1]

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[1] Petitioner sued a total of seven (7) defendants. These defendants were Respondent Thomas Newman, Jr. (in his individual capacity); Parole Officers Arthur Hegewald, Betty Weist, and Victoria Fafata (in their individual capacities); the State of Indiana; the Indiana Department of Correction; and Kathy Stoops-Wright, Clerk of Madison County (in her individual capacity). The motion to dismiss was filed by all of the "State" defendants, which were all parties represented by the Office of the Indiana Attorney General (*i.e.*, all defendants, except Stoops-Wright). Defendant Stoops-Wright was represented by separate counsel through Madison County and chose to file an answer to Petitioner's second amended complaint on June 2, 2004.

On June 25, 2004, the district court granted the defendants' motion to dismiss Petitioner's second amended complaint. *See* App. A13, *infra*. The district court's order also dismissed Petitioner's claims against Defendant Stoops-Wright, though she had never filed a motion to dismiss and in fact had filed an answer to Petitioner's second amended complaint. Thereafter, on September 3, 2004, Petitioner filed a motion for clarification asking the district court if it had intended to dismiss his claims against all defendants, or just the defendants who actually filed the motion to dismiss. On September 9, 2004, the district court clarified that it intended to dismiss all of Petitioner's federal claims against all defendants. *See* App. A20, *infra*. The district court stated that it had *sua sponte* dismissed Petitioner's claims against the clerk of Madison County. The district court also dismissed Petitioner's claims brought under state law for want of jurisdiction, following the dismissal of the federal claims. Petitioner subsequently re-filed his state law claims in state court. Those state law claims are still pending in the Indiana state court system, and are not a part of this petition.

Petitioner appealed the dismissal of his federal claims against the individually named defendants to the Seventh Circuit Court of Appeals.[2] On August 18, 2005, the Court of Appeals issued an opinion reversing the district court's dismissal of the parole agent defendants and the Madison County clerk, Kathy Stoops-Wright. *See* App. A1, *infra*. The Seventh Circuit held the parole officials were not entitled to absolute judicial immunity. Further, the Court of Appeals held that the district court inappropriately

[2] Petitioner did not bring any federal claims against the State of Indiana or the Indiana Department of Correction.

dismissed the Madison County clerk because she had never filed nor joined in the motion to dismiss. The Seventh Circuit did hold, however, that Respondent Judge Thomas Newman, Jr. was entitled to judicial immunity.

Thereafter, Petitioner Lance Dawson timely filed a petition for rehearing and rehearing *en banc*. Additionally, defendant parole officials Weist, Fafata, and Hegewald filed a petition for panel rehearing. On December 6, 2005, the Seventh Circuit indicated by order that both Petitioner's and the Defendants' petitions were denied. *See* App. A23, *infra*.

Petitioner now timely files his petition for writ of *certiorari* with this Court to review the Seventh Circuit's grant of judicial immunity to Respondent Newman. Petitioner does not challenge the Court of Appeals' judgment as to any other defendant, and seeks to reverse only the judgment of the Court of Appeals as to Respondent Judge Thomas Newman, Jr.

REASONS FOR GRANTING THE WRIT

The Seventh Circuit's decision granting judicial immunity to Respondent Judge Thomas Newman, Jr. extends the doctrine of absolute judicial immunity beyond the limits this Court has previously enunciated. The Court of Appeals' interpretation of judicial immunity conflicts with this Court's precedent, such as *Forrester v. White*, 484 U.S. 219 (1988), which requires the application of a functional test in determining whether an act that causes a constitutional deprivation can be appropriately shielded from liability. Furthermore, the expansive interpretation of judicial immunity by the Seventh Circuit radically

sweeps into absolute immunity even the most administrative and ministerial acts, and therefore has dramatic consequences that require consideration by this Court. Accordingly, *certiorari* is appropriate in this instance.

Respondent Newman is not entitled to absolute immunity for his failure to take the necessary administrative steps to insure Respondent's release from prison. Judge Newman's failure to act does not qualify as a judicial act. Consequently, the doctrine of judicial immunity does not protect Respondent Newman, and he is liable for damages for Petitioner's unlawful incarceration.

It is well-accepted that judges are entitled to absolute immunity from damages for their judicial conduct. *Mireles v. Waco*, 502 U.S. 9, 11-12 (1991); *Forrester v. White*, 484 U.S. 219, 225-29 (1988). Among other things, this immunity serves to protect "judicial independence by insulating judges from vexatious actions prosecuted by disgruntled litigants." *Forrester v. White*, 484 U.S. at 225 (citing to *Bradley v. Fisher*, 80 U.S. 335, 348 (1872)). The doctrine is designed to give a judge the freedom to act upon his convictions without fear of personal consequences. *Pierson v. Ray*, 386 U.S. 547, 554 (1967) (citing *Bradley v. Fisher*, 80 U.S. at 349). It is "supported by a long-settled understanding that the independent and impartial exercise of judgment vital to the judiciary might be impaired by exposure to potential damages liability." *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 435 (1993). When a judge acts in his judicial capacity, judicial immunity serves to protect that judge from pernicious litigation. However, when a judge acts in an administrative sense, he may be liable for constitutional violations.

To determine whether absolute immunity attaches to the particular conduct of a judicial officer, this Court employs a functional approach. *Forrester v. White*, 484 U.S. at 224. This inquiry does not focus upon the label attached to the position in question; rather, the focus is upon the nature of the function performed and "the effect that exposure to particular forms of liability would likely have on the appropriate exercise of those functions." *Forrester*, 484 U.S. at 224. Thus, when a judge engages in a purely administrative function, such as terminating an employee, this Court is less concerned that the threat of liability will "create perverse incentives that operate to *inhibit* officials in the proper performance of their duties." *Forrester*, 484 U.S. at 223 (emphasis in original). Judicial immunity, therefore, does not apply to ministerial or administrative acts. *See Forrester*, 484 U.S. at 228-29; *Stump v. Sparkman*, 435 U.S. 349, 360 (1978); *Ex Parte Virginia*, 100 U.S. 339, 348 (1879).

The burden is on the individual seeking immunity to establish that such immunity is appropriate. As this Court has noted:

> We have consistently "emphasized that the official seeking absolute immunity bears the burden of showing that such immunity is justified for the function in question. The presumption is that qualified rather than absolute immunity is sufficient to protect officials in the exercise of their duties. We have been quite sparing in our recognition of absolute immunity, and have refused to extend it any further than its justification would warrant."
>
> *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 433 n.4 (1993) (quoting *Burns v. Reed*, 500 U.S. 478, 486-87 (1991)).

A fair reading of the Seventh Circuit's decision appears to reject the functional analysis. The appellate court's opinion clearly indicates that the focus was not in fact on the nature of the act performed, but was, rather, on the individual engaged in the act. As the Seventh Circuit noted, assuming that Respondent Newman had a personal duty to send notice of Dawson's release order, "it follows that the acts or omissions in the performance of that judicial duty are immunized. To the extent that [there is] a duty on the judge at all, that duty implicates the judge's role *as judge* rather than as an administrative or clerical officer." *Dawson v. Newman*, 419 F.3d 656, 662 (7th Cir. 2005) (emphasis in original). As is clear, the Seventh Circuit's analysis incorrectly focused upon the "role" that was being served by the act, and not the nature of the function performed. In other words, the Court of Appeals inappropriately evaluated the status of the individual performing the task, rather than the task itself.

The appellate court's analytical inversion disregards this Court's precedent of *Forrester v. White*, 418 U.S. 219 (1988), and related cases. In *Forrester*, this Court held that a state trial court judge did not have absolute judicial immunity from a suit for damages under § 1983 for his decision to demote and dismiss a probation officer. This Court reasoned "immunity is justified and defined by the *functions* it protects and serves, not by the person to whom it attaches." *Id.* at 227 (emphasis in original). The Court found that because the judge's actions were not "judicial" in nature, absolute immunity was inappropriate. *Id.* at 229-30. This Court has continued to view the "functional analysis" discussed in *Forrester* as the standard for evaluating claims of judicial immunity. *See, e.g., Antoine v.*

Byers & Anderson, Inc., 508 U.S. 429, 435 (1993); *Mireles v. Waco*, 502 U.S. 9, 13 (1991).

The Seventh Circuit's analysis does not follow the dictates of *Forrester* and its progeny. As the Seventh Circuit noted, judicial immunity was appropriate for Respondent because any act or omission that might have occurred was "a part of the judicial case processing function," and thus invoked a "judicial duty." *Dawson v. Newman*, 419 F.3d at 661-62. But this focus forgoes a functional analysis of the act in favor of a concern for an actor's "job duties." As this Court specifically explained in *Forrester*, "[t]o conclude that, because a judge acts within the scope of his authority, such [administrative] decisions are brought within the court's 'jurisdiction,' or converted into 'judicial acts,' would lift form over substance." *Forrester*, 484 U.S. at 230. Indeed, in *Supreme Court of Virginia v. Consumers Union of United States, Inc.*, 446 U.S. 719 (1980), this Court held that, despite the fact only state court judges could promulgate and enforce a state bar code of conduct, neither function was judicial in nature and absolute immunity was not available to the defendants. It is in this vein that the Seventh Circuit's focus runs afoul of this Court's prior decisions.

Judge Newman is not absolutely immune because his actions in this case were administrative, not judicial. Accepting as true Plaintiff's allegations in his second amended complaint, Judge Newman failed to follow-up on his judicial decision in an administrative sense. On July 18, 2001, the Indiana Court of Appeals held that the trial court improperly revoked Dawson's probation. Based upon this opinion, a docket entry dated July 18, 2001 by Judge Newman ordered Dawson's release from the Department of Correction. Thereafter, Judge Newman

took no administrative steps, as was required, to ensure Dawson's release. Dawson lingered in the prison system until approximately September 6, 2002 – over a year after his ordered release. Thereafter, Dawson was still on parole and informed his parole officer that he should not be under parole supervision given that he was to be released from prison nearly fourteen (14) months previously. Dawson's parole officer contacted the court staff of Judge Newman to inform them of Dawson's situation. However, neither Judge Newman nor any member of his staff instructed Dawson's parole officer as to what to do, and Dawson remained on parole for an additional twelve (12) months.

Judge Newman's acts were clearly administrative because he had already decided the matter of whether Dawson should be released from prison based upon the Indiana Court of Appeals' decision. Judge Newman entered into the docket on July 18, 2001 an order calling for Dawson's release. Judge Newman's judicial acts – deciding whether to release Dawson and when that release would be issued – were already performed. The judicial acts were already done. The failure to follow-up with that release by merely communicating that order to the department of correction and the parties is clearly an administrative act. There is nothing left to "judicially" decide at such point – the decision had been reached, but it was not communicated. A decision made in a vacuum and not communicated is a decision without consequence, and this fact simply cannot hold when a citizen has been wrongly incarcerated in prison for fourteen (14) months.

As mentioned *supra*, the focus of a judicial immunity consideration is upon the nature of the function performed and "the effect that exposure to particular forms of liability would likely have on the appropriate exercise of those

functions." *Forrester*, 484 U.S. at 224. Thus, when a judge engages in a purely administrative function, such as terminating an employee, courts are less concerned that the threat of liability will "create perverse incentives that operate to *inhibit* officials in the proper performance of their duties." *Forrester*, 484 U.S. at 223 (emphasis in original). The reason for this administrative exception is clear – holding a judge liable for his administrative acts is less likely to deter that judge from well-reasoned and considered judgments in the future since at issue is mere ministerial conduct, and not the judge's adjudicative discretion.

This court has noted with regard to judicial immunity that, the "'touchstone' for the doctrine's applicability has been 'performance of the function of resolving disputes between parties, or of authoritatively adjudicating private rights.'" *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 435-36 (1993) (citing *Burns v. Reed*, 500 U.S. 478, 500 (1991) (Scalia, J., concurring in judgment in part and dissenting in part)). Judicial immunity is designed to protect the "judicial acts" performed by a judge, as opposed to the non-judicial acts "that judges may on occasion be assigned by law to perform." *Forrester*, 484 U.S. at 227. Accordingly, the imposition of liability for administrative acts is a proper way to check a judge's inappropriate actions and is not an improper method of hindering the adjudicative tenor of judicial decision-making.

As one source has offered:

> A nonimmune "ministerial" act is one where the duty is absolute, certain, and imperative, involving merely the performance of a specific task, and the time, mode, and occasion for its performance are defined with such certainty that nothing

> remains for the exercise of judgment and discretion; a ministerial act involves the clerical duties which the public official is required to perform upon a given set of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to his own judgment or opinion as to the propriety of the act to be performed. Or as otherwise stated, a function is "ministerial" if the law prescribes the duties to be performed with such precision that nothing is left to discretion of the actor.
>
> 63C Am. Jur. 2d *Public Officers* § 325 (2005).

Indeed, ministerial acts are those done by officers and employees who are required to administer the law with little choice as to when, where, how or under what circumstances their acts are to be done. *See* Restatement (Second) of Torts § 895D, comment h.

In this case, Judge Newman's acts with respect to communicating his order to release Dawson from the DOC were prescribed and circumscribed by an applicable statute (Ind. Code § 35-38-1-16), and amounted to little more than the equivalent of mailing his order to the department of correction. Accordingly, there is no question that Judge Newman's acts were functionally administrative and ministerial in nature, and are not judicially immune.

Judge Newman failed to provide notice to the department of correction of his order, as required by state statute, and thereby caused Dawson's continued incarceration.

Indiana Code § 35-38-1-16 provides:

> Whenever:
>
> (1) a court corrects an erroneous sentence or modifies a previously imposed sentence; and
>
> (2) the convicted person is incarcerated or is to be incarcerated by the department of correction;
>
> the court shall immediately send certified copies of the corrected or modified sentence to the department of correction.

Here, this Indiana statutory provision specifically circumscribes the conduct of Respondent Newman to such a degree that nothing is left to the discretion of the trial court judge. The statute commands when the notice must be given – *immediately*, how the notice must be issued – *certified*, and to whom the notice must be sent – *department of correction*. Accordingly, once Petitioner's sentence was modified, and the order calling for his release docketed, the issuance of the notice was nothing more than a ministerial task devoid of any discretion that bears resemblance to the "performance of the function of resolving disputes between parties, or of authoritatively adjudicating private rights." *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 435-36 (1993) (citing *Burns v. Reed*, 500 U.S. 478, 500 (1991) (Scalia, J., concurring in judgment in part and dissenting in part)). Respondent's failure, then, is not shielded by absolute judicial immunity.

The Seventh Circuit disregarded the Indiana statutory provision by noting that even if it were to require a personal duty of the judge, "that duty implicates the judge's role *as judge* rather than as an administrative or

clerical officer." *Dawson v. Newman*, 419 F.3d at 662 (emphasis in original). The Court of Appeals relied on its prior decision in *Lowe v. Letsinger*, 772 F.2d 308 (7th Cir. 1985) as support for its view. In *Lowe*, the defendant judge failed to rule on a petition for post-conviction relief for four (4) years and failed to provide notice of his order when he finally did rule for three (3) weeks. The Seventh Circuit found these acts to be within absolute judicial immunity. The Court of Appeals stated that "[D]eciding when to decide a case . . . is a judicial act for which a judge is absolutely immune." 772 F.2d at 312. The Seventh Circuit further held that a judge's decision "as to whether and how notice should be given is also immunized." *Id.* at 313. However, the Court of Appeals noted that it was "not holding that everything a judge does is judicial and clothed with absolute immunity, for if it is truly nothing more than purely ministerial or administrative the judge will not be absolutely immune." *Id.* In a similar sense, the *Lowe* court noted as an example that the timing or issuance of a decision could be administrative in nature "where a statute specifically sets forth a maximum period for decision-making." *Id.* at 312 n.4.

Armed with these principles, and this Court's *Forrester* decision, the Seventh Circuit should have concluded that Respondent Newman's acts were administrative in nature. As is clear from the facts alleged in the second amended complaint, Respondent Newman had already issued his decision to release Petitioner Dawson from prison. Indeed, Respondent Newman's order had even been docketed on the court's case management system. The only act left to perform was to send notice to the department of correction (and to the parties), but this act never occurred. And, as is clear from the statute, there is

at least a duty (or joint-duty with the court clerk) to issue the notice to the department of correction. It is in this sense that Petitioner Dawson does not seek to implicate Respondent Newman's decision to decide the case, nor his actual decision rendered. Those decisions had already been made, and the decision to release Petitioner docketed. Rather, Petitioner seeks to hold Respondent accountable for the administrative failures of not providing notice and not correcting the mistake once his court staff was made aware of the problem.

In this Court's jurisprudential history, no case such as Petitioner's is directly on-point. The results of certain cases, however, are illustrative. The major cases previously before this Court that found judicial immunity applicable dealt with judges actually ruling from the bench or engaging in an adjudicatory function. *See, e.g.*, *Mireles v. Waco*, 502 U.S. 9 (1991) (judge sued for controlling courtroom by directing police officers to bring counsel who was in the building to the courtroom for pending case); *Stump v. Sparkman*, 435 U.S. 349 (1978) (judge sued for ruling on petition filed in his court); *Pierson v. Ray*, 386 U.S. 547 (1967) (judge sued for finding and entering conviction); *Bradley v. Fisher*, 80 U.S. 335 (1871) (judge sued for removing attorney from practice before the judge's court for inappropriate behavior in courtroom). Petitioner's case is different from these cases because it does not seek to impinge on a judge's ability to make rulings, thwart control over the courtroom, or inhibit discretion. Rather, Petitioner's claim involves the administrative acts that, though "quite important in providing the necessary conditions of a sound adjudicative system . . . [are] not themselves judicial or adjudicative." *Forrester*, 484 U.S. at 229.

The practical effect of the appellate court's ruling will greatly expand judicial immunity to the point where the doctrine's boundary extends beyond the guideposts established by this Court's precedent. As this Court has noted:

> If judges were personally liable for erroneous decisions, the resulting avalanche of suits, most of them frivolous but vexatious, would provide powerful incentives for judges to avoid rendering decisions likely to provoke such suits. The resulting timidity would be hard to detect or control, and it would manifestly detract from independent and impartial adjudication.
>
> *Forrester*, 484 U.S. at 226-27 (citation omitted).

However, suits for damages caused by administrative failures are not of the same magnitude. Such suits seek to remedy harms that cannot be easily corrected "through ordinary mechanisms of review." *Id.* at 227. Additionally, suits for injuries caused by administrative acts do not impinge on a judge's necessary discretion that is required as part of the adjudicatory nature of the judicial position. Such suits seek redress for wrongs produced by the failure to conduct oneself in accordance with a definitive set of duties, rather than attempt to infiltrate the discretion and consideration of a judge's decision. The importance of these administrative suits as a check to abuse of power, and their limited nature, are readily apparent from the facts now at bar.

In Petitioner's case, he does not seek to hold Respondent Newman accountable for issuing a decision he disagrees with. Nor does Petitioner's suit seek to penetrate the discretion afforded judges. Rather, Petitioner attempts to hold Respondent Newman accountable for failing to perform the most basic of ministerial tasks required by

statute – providing notice to a man wrongfully incarcerated. Respondent's failure is tantamount to failing to lick a stamp and mail the notice to the department of correction. Petitioner's suit addresses conduct that is far-removed from judicial acts typically imbued with adjudicatory discretion.

Were Petitioner permitted to prosecute his claim, one could hardly expect "an avalanche of suits." Petitioner seeks redress for injuries sustained as a result of an administrative failure to send notice of an already decided order calling for his release, and his continued incarceration for over a year. Such suits would not become the staple of our federal courts' dockets.

Additionally, the limited type of suit Petitioner brings is further shown by the fact that Petitioner could not have easily corrected his unlawful confinement "through ordinary mechanisms of review." *Forrester* at 227. As a factual matter, Petitioner was entirely unaware of the court's order calling for his release until after he was out of prison. As a legal issue, however, the decision was not one that would normally be appealed as the Petitioner won on the merits and there was no reason to appeal. These reasons create a unique set of circumstances that are unlikely to burden federal judges with unnecessary collateral litigation.

Finally, as a practical matter, were the Court of Appeals' decision to stand, citizens not convicted of crimes could be unlawfully incarcerated without any redress by an unchecked government. Under the Seventh Circuit's rationale, a judge could order an inmate released from a life-sentence after conclusive DNA evidence showed that inmate to be completely innocent, yet never send notice to

any parties or the department of correction and allow that individual to languish for the rest of his life with no remedy for the aggrieved individual. The United States Constitution does not vest such authority with a judge without the necessary protections of due process and respect for one's vital civil rights. Yet, such a conclusion is not an illogical result based upon the Seventh Circuit's opinion. Indeed, Petitioner Dawson spent approximately fourteen (14) months in prison upon no lawful basis; a situation of 600 months would merely be a difference in degree, not of kind. Furthermore, Petitioner's case does not involve a situation where transmittal of notice causes minimal delay to an inmate's release. This case involves indifference to a citizen's constitutional rights, not bureaucratic slippage. To sanction the arbitrary, and capricious conduct in this case is to eviscerate the entire set of rights secured to each citizen under the Constitution. The Seventh Circuit's decision cannot stand on this basis alone.

CONCLUSION

It is axiomatic that a citizen cannot be held in prison for over a year upon no lawful basis. Petitioner Lance Dawson suffered that fate of prolonged incarceration. He now seeks to redress his constitutional injuries, and attempt, in the only way he can under our legal system, to remedy the wrongs inflicted upon him. His suit against Respondent Judge Thomas Newman, Jr. for administrative failures, must proceed to correct this injustice. Because the lower court's decision contradicts this Court's precedent, and because of the manifest injustice that would accompany affirming the appellate court's decision,

absolute judicial immunity should not bar Petitioner's action for relief.

For the foregoing reasons, this petition for writ of *certiorari* should be granted.

Respectfully submitted,

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In the
United States Court of Appeals
For the Seventh Circuit

No. 04-2894

LANCE DAWSON,

Plaintiff-Appellant,

v.

THOMAS NEWMAN, JR., Madison County Superior Court Judge in his individual capacity, STATE OF INDIANA, INDIANA DEPARTMENT OF CORRECTIONS, ARTHUR HEGEWALD, BETTY WEIST, VICTORIA FAFATA, and KATHY STOOPS-WRIGHT,

Defendants-Appellees.

Appeal from the United States District Court
for the Southern District of Indiana, Indianapolis Division.
No. 03 C 1563 – **Sarah Evans Barker,** *Judge.*

ARGUED JANUARY 21, 2005 – DECIDED AUGUST 18, 2005

Before RIPPLE, WOOD, and SYKES, *Circuit Judges.*

SYKES, *Circuit Judge.* When Lance Dawson's probation was revoked, he appealed to the Indiana Court of Appeals and won a ruling that the revocation was improper. On remand Madison County Superior Court Judge Thomas Newman, Jr., ordered Dawson released from prison. Judge Newman's office faxed a copy of the Indiana

Court of Appeals' decision to the Indiana Department of Corrections ("DOC") but did not include a copy of the release order. Dawson thus remained in prison for another fourteen months, until he was released on parole supervision. He reported for supervision, informed parole officials that his original probation revocation had been overturned, but was unable to convince officials that he should not be on parole.

Dawson then brought this suit under 42 U.S.C. § 1983 against Judge Newman, Madison County Clerk of Court Kathy Stoops-Wright, the DOC, and several parole officials. The State defendants (the judge, the DOC, and the parole officials) moved to dismiss on absolute immunity grounds; the clerk, Stoops-Wright, filed an answer and did not join the motion to dismiss. The district court granted the dismissal motion, concluding that the judge was immune and the DOC and its parole officials could not be held liable for Dawson's wrongful continued incarceration and parole supervision because they had no power to "recompute a sentence" and were not at fault for the failure to transmit the release order. The district court later issued a brief "clarification" order indicating that the dismissal was "complete" and was meant to include dismissal of Dawson's claims against the clerk, even though she had not moved to dismiss.

We affirm in part and reverse in part. Judge Newman is entitled to absolute judicial immunity, and the claims against him were properly dismissed. The claims against the parole officials should not have been dismissed, however. The dismissal motion raised only the issue of absolute immunity – not the liability merits – and the parole officials are not entitled to absolute immunity. Finally, the district court's follow-up order summarily dismissing the

claims against the court clerk was improper, as she had not moved to dismiss.

I. Background

We accept the facts alleged in Dawson's second amended complaint as true for purposes of our review of the district court's order granting the defendants' motion to dismiss. *Baker v. Kingsley,* 387 F.3d 649, 660 (7th Cir. 2004). In 1990 Dawson was convicted of certain criminal charges and placed on three years' probation with a suspended sentence of six years. In September 1992 Dawson's probation officer filed a notice of probation violation and a hearing was scheduled. The hearing was rescheduled several times due to the unavailability of the State's witnesses. On February 5, 1993, Dawson moved for a continuance. This motion was granted but the hearing was never rescheduled.

On June 12, 2000, approximately ten years after being placed on three years' probation and eight years after the alleged probation violation, the State filed an amended notice of probation violation. On October 23, 2000, Judge Newman revoked Dawson's probation and imposed the six-year term of incarceration. Dawson appealed. On July 18, 2001, the Indiana Court of Appeals held that Dawson's probation revocation was improper as it occurred long after his term of probation had expired. *See Dawson v. State,* 751 N.E.2d 812, 815 (Ind. Ct. App. 2001). The case was remanded to Judge Newman and he immediately entered a docket order mandating Dawson's release. Someone in Judge Newman's office faxed a copy of the Indiana Court of Appeals' decision to the DOC, but the release order itself was never transmitted. E-mails were

sent between DOC employees indicating that Dawson was going to be released due to his successful appeal, and he was transferred from the Kentucky correctional facility where he was incarcerated to Plainfield Correctional in Indiana for "possible release on appeal."

But while the wheels of Dawson's imminent release ostensibly were moving forward, he remained in custody for another fourteen months. He did not question his incarceration, as he had not been informed of the Court of Appeals' decision and believed his appeal was still pending. On September 6, 2002, Dawson was finally released, but not as a completely free man; he was instead ordered to report for parole supervision. He reported as ordered, but by this time he had learned about the Indiana Court of Appeals' decision and Judge Newman's docket order and protested to parole officials that his placement on parole supervision was improper. Dawson's protests apparently fell on deaf ears. Dawson told his parole officer, Betty Weist, that he had been ordered released and should not be on parole. This prompted Weist to contact Judge Newman's court staff for advice, but none was forthcoming. Weist's supervisor, Victoria Fafata, told her to continue Dawson's parole supervision. Dawson's attorney got involved, and the matter was referred up the chain of command to Arthur Hegewald, Supervisor of Parole Services. Hegewald seemed unconcerned and declined to meet with Dawson's attorney, indicating that the snafu "did not matter" because Dawson's parole would soon expire of its own accord.

Dawson filed this lawsuit in state court under 42 U.S.C. § 1983 against Judge Newman, the DOC, and DOC parole officials Weist, Fafata, and Hegewald. The defendants removed the case to federal court and Dawson

amended the complaint to add Madison County Clerk of Court Kathy Stoops-Wright as a defendant. Dawson filed a second amended complaint, alleging due process, equal protection, wrongful imprisonment, and cruel and unusual punishment violations, and also asserting state law claims for false imprisonment. The State defendants – Judge Newman, the DOC, and the parole officials – moved to dismiss pursuant to Rule 12(b)(6), asserting absolute immunity. As noted, Stoops-Wright filed an answer and did not join the motion to dismiss.

The district court dismissed the federal claims with prejudice, concluding that the judge was entitled to absolute judicial immunity and the DOC and the parole officials "cannot be held liable" because "[n]either the DOC nor its parole agents are empowered to recompute a sentence in the manner which would have been required for Dawson to have been released." The court further concluded that "[t]he failure to transmit the [release] documentation was not the fault of the parole officers, who merely maintained their supervision over Dawson in the normal course of their duties."[1] The court's order purported to dispose of the entire case, even though Stoops-Wright had not moved to dismiss. Dawson therefore requested clarification from the court. The district court responded with a "clarification" order indicating that the earlier order was intended to include a sua sponte dismissal of Dawson's claims against Stoops-Wright because "the reasoning and disposition [of the earlier order] were

[1] The district court also dismissed the state law false imprisonment claims without prejudice (false imprisonment was the only claim against the DOC); these claims are not at issue in this appeal.

complete, though one defendant failed to formally join in the challenge to the claims against her." Dawson appealed.

II. Discussion

We review the district court's judgment granting the defendants' motion to dismiss de novo. *Baker*, 387 F.3d at 660. As we have noted, the district court held that Judge Newman was entitled to absolute judicial immunity but did not address the immunity argument of the parole officials, ruling instead on the merits that they "cannot be held liable" because they had no power to "recompute a sentence" and were "not at fault" for the failure to transmit the release order. Upon Dawson's request for clarification, the court summarily swept Dawson's claims against the court clerk under the umbrella of the dismissal order, even though the clerk had not moved to dismiss. The court did not explain the reasoning behind this "clarification" order, saying only that the earlier dismissal order was "complete" and that "the court may, sua sponte, dismiss the complaint where the inadequacy of the complaint is clear."

On appeal, the parties argue the immunity question, and Dawson also argues that the district court should not have dismissed his claims against Stoops-Wright sua sponte. We take this last argument first. Stoops-Wright has not responded to it, which ordinarily means the point is deemed waived. *Holman v. Indiana*, 211 F.3d 399, 406 (7th Cir. 2000). In any event, Dawson is correct that the district court's sua sponte dismissal of Dawson's claims against Stoops-Wright was entirely inappropriate. "Unless a claim is frivolous, it is rudimentary that a court cannot sua sponte enter summary judgment or dismiss a complaint

without notifying the parties of its intentions and allowing them an opportunity to cure the defect in the complaint or respond." *English v. Cowell,* 10 F.3d 434, 437 (7th Cir. 1993). The district court gave no notice that it intended to give Stoops-Wright the benefit of an order granting a dismissal motion she had neither filed nor joined. Dawson had no notice of the grounds invoked for the dismissal and was given no opportunity to respond. The court's "clarification" order did not identify any legal basis whatsoever for dismissing the claims against Stoops-Wright. Although Stoops-Wright contends on appeal that she is entitled to absolute immunity and breached no duty, these arguments must be raised first in the district court. *Id.* at 440 ("English was entitled to an opportunity to be heard before dismissal of his claims. This opportunity must be afforded, not on appeal, but at the district court. . . ."). The order dismissing Dawson's claims against Stoops-Wright must be reversed.

The dismissal of the claims against Judge Newman, however, was entirely appropriate, as the judge is entitled to absolute immunity. The doctrine of judicial immunity has been embraced "for centuries." *Lowe v. Letsinger,* 772 F.2d 308, 311 (7th Cir. 1985). It confers complete immunity from suit, not just a mere defense to liability, and "is applicable in suits under section 1983 because the 'legislative record [gave] no clear indication that Congress meant to abolish wholesale all common-law immunities.'" *Dellenbach v. Letsinger,* 889 F.2d 755, 758 (7th Cir. 1989) (quoting *Pierson v. Ray,* 386 U.S. 547, 554 (1967)). If a judge errs "through inadvertence or otherwise, a party's remedy is through appellate process." *Lowe,* 772 F.2d at 311. Judicial immunity extends to acts performed by the judge "in the judge's *judicial capacity.*" *Dellenbach,* 889 F.2d at

759 (emphasis in original). That is, judicial immunity applies "to judicial acts, but not to ministerial or administrative acts." *Lowe,* 772 F.2d at 312. The Supreme Court has acknowledged the imprecision inherent in "attempting to draw the line between truly judicial acts, for which immunity is appropriate, and acts that simply happen to have been done by judges." *Forrester v. White,* 484 U.S. 219, 227 (1988).

Dawson argues that Judge Newman's failure to transmit the release order to the DOC was not a "judicial" act or omission but a "ministerial" or "administrative" one. He cites an Indiana statute that imposes a requirement upon "the court" to notify the DOC of a corrected or modified sentence: "Whenever . . . a court corrects an erroneous sentence or modifies a previously imposed sentence[,] . . . the court shall immediately send certified copies of the corrected or modified sentence to the department of correction." IND. CODE § 35-38-1-16 (2004). Judge Newman responds that this case is analogous to *Lowe,* which involved a § 1983 claim arising out of a judge's four-year delay in ruling on a postconviction motion and subsequent three-week delay in transmitting the order granting postconviction relief. We held in *Lowe* that judicial omissions of this sort were entitled to absolute immunity. *Lowe,* 772 F.2d at 313. This case is substantially similar.

We began in *Lowe* by noting that three factors generally govern the determination of whether a particular act or omission is entitled to judicial immunity: "(1) whether the act or decision involves the exercise of discretion or judgment, or is rather a ministerial act which might as well have been committed to a private person as to a judge; (2) whether the act is normally performed by a judge; and (3) the expectations of the parties, i.e., whether

the parties dealt with the judge as judge." *Lowe*, 772 F.2d at 312. We concluded in *Lowe* that "[a]ll three factors point to the judicial character" of the judge's delay in deciding the postconviction motion because "deciding when to decide a case, no less than deciding the case itself, is a judicial act for which a judge is absolutely immune." *Id.* We further concluded that the three-week delay in sending notice of the order granting postconviction relief was also immunized because although "[o]rdinarily the mere mailing of the notice is a clerk's chore" that did not involve the exercise of discretion, to the extent that the judge "did undertake to control the disposition of his own order[,] he was still acting in his judicial role." *Id.* at 313. Although the judge in *Lowe* was entitled to absolute immunity, the court clerk was not; we concluded that "the clerk's duty to type and send notice after entry of judgment is a non-discretionary, ministerial task." *Id.*

Similarly here, § 35-38-1-16 requires "the court" to send to the DOC a copy of any order correcting or modifying a sentence. To the extent that this imposes any duty on the judge himself (as opposed to the court clerk or other court staff as part of "the court" as an institution), the judge is acting in his judicial capacity, the parties are "deal[ing] with the judge as a judge," *id.* at 312, and the judge's alleged failure to act is entitled to absolute immunity. Dawson's claims against Judge Newman are premised upon an alleged violation of what Dawson contends is a *personal* statutory duty of the judge, which necessarily involves an act or omission by the judge as a part of the judicial case processing function. Assuming arguendo that Dawson's premise is correct (that the statute imposes a personal duty on the judge), it follows that the acts or omissions in the performance of that judicial duty are

immunized. To the extent that the statute imposes a duty on the judge at all, that duty implicates the judge's role *as judge* rather than as an administrative or clerical officer. Judge Newman is absolutely immune and the claims against him were properly dismissed.

The parole officers' immunity argument is another matter, however. They contended in the district court, and reiterate here, that they are entitled to absolute immunity because their duties as parole officers were closely aligned with the judicial process. The district court disregarded this argument and dismissed on the basis of its sua sponte conclusion that the parole officers "cannot be held liable" for the failure of others to correct the record regarding Dawson's status. This, like the sua sponte dismissal of Dawson's claims against the court clerk, was improper. Addressing the argument that *was* raised – in the district court and on appeal – we conclude that the parole officers are not entitled to absolute immunity.

Absolute immunity for acts by nonjudicial government officers is determined on the basis of "a functional approach." *Wilson v. Kelkhoff,* 86 F.3d 1438, 1443 (7th Cir. 1996). "Absolute immunity is only accorded for limited functions; '[t]he presumption is that qualified rather than absolute immunity is sufficient to protect government officials in the exercise of their duties.'" *Id.* (quoting *Burns v. Reed,* 500 U.S. 478, 486-87 (1991)). Absolute judicial immunity "is not limited to government officials with the title of . . . judge; officials performing 'functionally comparable' acts in other contexts, such as administrative agencies, are also accorded absolute immunity." *Id.* (quoting *Butz v. Economou,* 438 U.S. 478, 512 (1978)). Thus, we have held that parole officials are entitled to absolute immunity "for their activities that are analogous to those

performed by judges." *Id.* at 1444. These include, for example, acts associated with the decision to grant, revoke, or deny parole, or the signing of an arrest warrant. *Id.* Because such activities involve decision-making that is "judicial" in nature, it follows that absolute immunity should shield such acts.

The allegations against the parole officials in this case do not involve acts that are analogous to those performed by judges. Weist, Fafata, and Hegewald allegedly ignored Dawson's protests and refused to investigate his claim of entitlement to release from parole in the ordinary course of performing their everyday duties as parole officials. They offer no precedent for the proposition that they should be entitled to absolute immunity for performing their day-to-day duties in the supervision of a parolee. We decline to extend absolute judicial immunity to the circumstances presented here.

Accordingly, for the foregoing reasons, we AFFIRM the judgment dismissing Dawson's claims against Judge Newman, REVERSE the judgment dismissing his claims against the remaining defendants, and REMAND for further proceedings.

A true Copy:

Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit

UNITED STATES COURT OF APPEALS

For the Seventh Circuit
Chicago, Illinois 60604

JUDGMENT – WITH ORAL ARGUMENT

Date: August 18, 2005

BEFORE: Honorable KENNETH F. RIPPLE, Circuit Judge
Honorable DIANE P. WOOD, Circuit Judge
Honorable DIANE S. SYKES, Circuit Judge

No. 04-2894

LANCE DAWSON,

Plaintiff-Appellant

v.

THOMAS NEWMAN, JR., Madison County Superior Court Judge in his individual capacity, STATE OF INDIANA, INDIANA DEPARTMENT OF CORRECTIONS, et al.,

Defendants-Appellees

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division
No. 03 C 1563, Sarah Evans Barker, Judge

We AFFIRM the judgment dismissing Dawson's claims against Judge Newman, REVERSE the judgment dismissing his claims against the remaining defendants, and REMAND for further proceedings.

The above is in accordance with the decision of this court entered on this date.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

LANCE DAWSON,	)	
Plaintiff,	)	
vs.	)	1:03-cv-1563-SEB-VSS
THOMAS NEWMAN, JR., et al.,	)	
Defendants.	)	

ENTRY DISCUSSING MOTION TO DISMISS SECOND AMENDED COMPLAINT

(Filed June 25, 2004)

This cause is before the court on the second amended complaint of plaintiff Lance Dawson, on the defendants' motion to dismiss, on Dawson's response to the motion to dismiss, and on the defendants' reply.

Whereupon the court, having considered the second amended complaint, the defendants' motion to dismiss and the arguments supporting and opposing such motion, and being duly advised, now finds that the motion to dismiss must be granted. This conclusion rests on the following facts and circumstances:

1. Dawson pleaded guilty to burglary in the Madison Superior Court and was sentenced. His sentence was suspended and he was placed on three years of probation. In September 1992, his probation officer filed with the court a notice of probation violation alleging that Dawson had failed to comply with recommendations of the mental health center and failed to abstain from illicit drugs in that he had failed a drug test in August 1992. A violation hearing was not ultimately held until October 23, 2000, at

which time the trial court revoked Dawson's probation and sentenced him to six years. The revocation decision, however, was based in part on what the State described as new criminal offenses which had occurred in November 1998 and in May 2000. Dawson appealed the revocation decision. The Indiana Court of Appeals held that the revocation of probation was untimely and reversed the trial court. *Dawson v. Indiana*, 751 N.E.2d 812 (Ind.Ct.App. 2001) (*Dawson*). The Court of Appeals concluded in *Dawson* that there had been a complete failure of proof as to the probation violations alleged to have occurred during the term of Dawson's probation and that Dawson's probation could not be violated based on behavior occurring after the original term of probation would have expired. *Id.* at 815. The date of the decision in *Dawson* was July 18, 2001. The final words of the opinion are as follows:

> Based upon the foregoing, we conclude that the trial court improperly revoked Dawson's probation, and we ***remand for further proceedings*** consistent with this opinion.

Id. (Emphasis added.) Judge Newman issued a docket entry on July 18, 2001, directing Dawson's release from the Indiana Department of Correction ("DOC"), but there is no documentation of this order having been sent to the DOC. Dawson remained incarcerated, however, until September 6, 2002, at which time he was released to parole under the supervision of Weist. When Weist contacted the court staff, she received no further instructions from the trial court concerning parole.

2. The defendants are the following:

Madison Superior Court Judge Thomas Newman, Jr.
State of Indiana Department of Correction
DOC Parole Agent Betty Weist
New Castle District Regional Officer of Parole Services Victoria Fafata Parole Services Supervisor Arthur Hegewald
Madison County Clerk Kathy Stoops-Wright

Each of the defendant individuals is sued in his or her individual capacities. Dawson seeks compensatory damages, punitive damages, and attorney fees.

3. Dawson presents a combination of claims under federal law and under state law. His federal claims are asserted pursuant to 42 U.S.C. § 1983, and the court has subject matter jurisdiction over them through 28 U.S.C. § 1331 and § 1343(a)(3). The court has subject matter jurisdiction over the pendent state law claims, if at all, pursuant to 28 U.S.C. § 1367(a). The claims which Dawson asserts and the defendants involved in those claims are shown in the following chart.

Claim	Defendant(s)	Description of Claim
I	Newman, Stoops-Wright, and DOC	False Imprisonment under State Law
II	Newman, Weist, Fafata, Hegawald, Stoops-Wright	Equal Protection, Due Process, False Imprisonment under § 1983
III	Newman	Eighth Amendment under § 1983

4. The defendants challenge the legal sufficiency of Dawson's claims through their motion to dismiss, brought

pursuant to rule 12(b)(6) of the *Federal Rules of Civil Procedure*. Rule 12(b)(6) states that a court may dismiss a complaint for "failure to state a claim upon which relief can be granted." Such motions serve a limited purpose. A complaint should be dismissed for failure to state a claim upon which relief can be granted only if "it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957). "Rule 12(b)(6) should be employed only when the complaint does not present a legal claim." *Johnson v. Revenue Mgmt. Corp.*, 169 F.3d 1057, 1059 (7th Cir. 1999).

5. To state a claim under § 1983, a plaintiff must allege the violation of a right secured by the Constitution or laws of the United States and must show that the alleged deprivation was committed by a person acting under color of state law. *West v. Atkins*, 487 U.S. 42, 48 (1988). For reasons which will be evident, Dawson's federal claims must be addressed first.

6. Dawson's first federal claim is an amalgam of equal protection, due process, and "false imprisonment."

a. There is no factual predicate for an equal protection claim based on the allegations in the second amended complaint. *Washington v. Davis*, 426 U.S. 229, 247-48 (1976) (to state a claim under the Equal Protection Clause, a plaintiff must allege that a state actor intentionally discriminated against the plaintiff based upon his or her membership in a protected class); *see Hickey v. O'Bannon*, 225 F.3d 656, 657 (7th Cir. 2002) ("At a minimum, a complaint must contain facts sufficient to state a claim as a matter of law.") (citing *Fries v. Helsper*, 146 F.3d 452, 457 (7th Cir. 1998)).

b. A false imprisonment claim under 42 U.S.C. § 1983 is based on the Fourteenth Amendment protection against deprivations of liberty without due process of law. *Baker v. McColan*, 443 U.S. 137, 142 (1979). Judge Newman, however, is entitled to absolute judicial immunity as to a claim for damages based on decisions taken in his judicial capacity and not in the clear absence of jurisdiction. *See Brokaw v. Mercer County*, 235 F.3d 1000, 1015 (7th Cir. 2000).

> This common law doctrine shields judges from civil liability for their judicial actions. *Tucker v. Outwater*, 118 F.3d 930, 932 (2d Cir.1997). The principle of judicial immunity recognizes that "[a]lthough unfairness and injustice to a litigant may result on occasion, it is a general principle of the highest importance to the proper administration of justice that a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself." *Mireles v. Waco*, 502 U.S. 9, 10[] (1991). Thus, judges are not liable in civil actions for their judicial acts unless they have acted in the clear absence of jurisdiction. *Stump v. Sparkman*, 435 U.S. 349, 356-57 [] (1978). Moreover, a judge will not be deprived of immunity even if the action was in error, was done maliciously, was in excess of his authority, *id.*, and even if his exercise of authority is flawed by the commission of grave procedural errors. *Id.* at 359[].

Brokaw, 235 F.3d at 1015. There are two circumstances in which a plaintiff can overcome judicial immunity. First, "a judge is not immune from liability for nonjudicial actions, *i.e.*, actions not

taken in the judge's judicial capacity." *Mireles v. Waco*, 502 U.S. 9, 11 (1991). Second, "a judge is not immune for actions, though judicial in nature, taken in the complete absence of all jurisdiction." *Id.* at 12. There is no feature of what Judge Newman did or did not do in relation to either the initial revocation decision or his actions or inactions subsequent to *Dawson* which deprives his decisions of their judicial character or renders them taken in the clear absence of jurisdiction. Accordingly, there is no feature of what Judge Newman did or did not do which lies outside the scope of absolute judicial immunity under the circumstances of this case, unfortunate though those circumstances be.

c. The other defendants targeted in Claim II of the second amended complaint were dealing with a released inmate who, according to DOC records, had been released on parole. The trial court had not conveyed contrary information to the DOC. Neither the DOC nor its parole agents are empowered to recompute a sentence in the manner which would have been required for Dawson to have been released from parole as he demanded. Documentation was needed – documentation from a tribunal or executive officer with the authority to alter Dawson's sentence. That documentation was not transmitted. The failure to transmit the documentation was not the fault of the parole officers, who merely maintained their supervision over Dawson in the normal course of their duties. Although they could have undertaken inquiries in such a way as might have prompted others to be more zealous in ascertaining his custody status, the parole officers cannot be held liable for the failure of those others to act in that fashion.

7. It is contended in Claim III of the second amended complaint that Judge Newman violated Dawson's right to be free from cruel and unusual punishment by prolonging Dawson's detention beyond the issuance of *Dawson* and that Judge Newman's failure to "administratively order the release of Mr. Dawson[] constitutes deliberate indifference." This contention, which is at its core not discernibly distinguishable from the claim in Count II, hardly falls within the bounds of an Eighth Amendment claim. Even if the court could place it within the blanket of the Eighth Amendment, however, Judge Newman would be entitled to absolute immunity as to this claim for precisely the same reasons as explained relative to Claim II of the second amended complaint.

8. The federal claims have been dismissed prior to trial. The general rule in this circumstance is for the pendent state law claims to be dismissed without prejudice. *Wright v. Associated Ins. Cos.*, 29 F.3d 1244, 1251 (7th Cir. 1994). The general rule will be followed in this case.

IT IS SO ORDERED.

/s/ Sarah Evans Barker
SARAH EVANS BARKER,
Judge
United States District
Court

Date:___

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA

LANCE DAWSON, Plaintiff,	)	
vs.	)	1:03-cv-1563-SEB-VSS
THOMAS NEWMAN, JR., et al., Defendants.	)	

Entry Discussing Plaintiff's Motion for Clarification of Judgment

(Filed Sept. 9, 2004)

The plaintiff's motion for clarification of judgment filed on September 3, 2004, has been considered.

The plaintiff's claims against defendant Madison County Clerk Kathy Stoops-Wright were described in the Entry of June 25, 2004. Although it is true that the court described a single "motion" to dismiss, the legal sufficiency of each of the federal claims was assessed. The claims against defendant Stoops-Wright were joined with defendants who had challenged the claims in a motion to dismiss. The plaintiff had notice of that challenge and had responded to it. The plaintiff is correct in his motion filed on September 3, 2004, that it was the court's intention to embrace in its ruling of June 25, 2004, all the claims against all the defendants. The language of the Entry and of the final Judgment indicates as much. The absence of a separate judgment by defendant Stoops-Wright was not noted in the Entry of June 25, 2004, but it is well established that, even if a party does not make a formal motion to dismiss, the court may, *sua sponte,* dismiss the

complaint where the inadequacy of the complaint is clear. *See, e.g., Bryson v. Brand Insulations, Inc.*, 621 F.2d 556, 559 (3d Cir. 1980). A district court is not required to await the defendants' answer before dismissing a meritless case. Rather, once a plaintiff has paid a filing fee (whether partial or full), he need be given only notice and an opportunity to respond before the district court dismisses his case. *English v. Cowel*, 10 F.3d 434, 437 (7th Cir. 1993). Thus, the reasoning and disposition of June 25, 2004, were complete, though one defendant failed to formally join in the challenge to the claims against her. With this additional explanation concerning the procedure invoked as to the resolution of the claims asserted against defendant Stoops-Wright, this plaintiff's motion for clarification filed on September 3, 2004, is **granted**.

IT IS SO ORDERED.

/s/ Sarah Evans Barker
SARAH EVANS BARKER, Judge
United States District Court

Date: _____

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United States Court of Appeals
For the Seventh Circuit
Chicago, Illinois 60604

December 6, 2005

Before

Hon. KENNETH F. RIPPLE, *Circuit Judge*

Hon. DIANE P. WOOD, *Circuit Judge*

Hon. DIANE S. SYKES, *Circuit Judge*

No. 04-2894

LANCE DAWSON,

Appellant-Plaintiff,

v.

THOMAS NEWMAN, JR., Madison County Superior Court Judge in his individual capacity, STATE OF INDIANA, INDIANA DEPARTMENT OF CORRECTIONS, et al.,

Appellees-Defendants.

Appeal from the United States District Court for the Southern District of Indiana, Indianapolis Division.

No. 03 C 1563

Sarah Evans Barker, *Judge*.

ORDER

On consideration of the Appellant's petition for rehearing and petition for rehearing en banc and the Appellees State of Indiana, Indiana Department of Correction, Betty Weist, Victoria Fafata, and Arthur Hegewalds' petition for panel rehearing, no judge in active service has requested a vote on the petition for rehearing *en banc* and all of the judges on the original panel have voted to deny

rehearing. It is therefore ordered that the petitions are DENIED.

STATUTORY PROVISIONS

42 U.S.C. § 1983 (2005) reads as follows:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

Indiana Code § 35-38-1-16 (1983) reads as follows:

Certified copies of corrected or modified sentence

Sec. 16. Whenever:

(1) a court corrects an erroneous sentence or modifies a previously imposed sentence; and

(2) the convicted person is incarcerated or is to be incarcerated by the department of correction;

the court shall immediately send certified copies of the corrected or modified sentence to the department of correction.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

LANCE DAWSON, Plaintiff, v. THOMAS NEWMAN JR., MADISON COUNTY SUPERIOR COURT JUDGE, in his individual capacity; STATE OF INDIANA, INDIANA DEPARTMENT OF CORRECTION; BETTY WEIST, DEPARTMENT OF CORRECTION PAROLE OFFICER, in her individual capacity; VICTORIA FAFATA, NEW CASTLE DISTRICT REGIONAL OFFICER OF PAROLE SERVICES, in her individual capacity; ARTHUR HEGEWALD, SUPERVISOR, PAROLE SERVICES, in his individual capacity; KATHY STOOPS-WRIGHT, CLERK OF MADISON COUNTY, in her individual capacity Defendants.	CAUSE NO.: 1:03-cv-1563-SEB-VSS

SECOND AMENDED COMPLAINT FOR DAMAGES AND REQUEST FOR TRIAL BY JURY

I. NATURE OF THE CASE

1. This is an action by Plaintiff Lance Dawson against the State of Indiana Department of Correction (DOC), Madison County Superior Court Judge Thomas Newman Jr., various DOC Parole Service employees, and the Clerk of Madison County. Plaintiff seeks compensation under 42 U.S.C. § 1983 for the willful and wanton violation of his civil rights to be secure in his person and liberty under the Fourth, Eighth, and Fourteenth Amendments. Dawson brings this action to redress his false imprisonment and violation of his rights to due process, equal protection, and to be free from cruel and unusual punishment. This action seeks compensatory damages, punitive damages, and attorney fees.

II. PARTIES

2. Plaintiff Lance Dawson is a citizen of Indiana and at all times relevant to this Complaint was a resident of Indiana.

3. Defendant Madison County Superior Court Judge Thomas Newman Jr., was at all times relevant employed as a Superior Court Judge for the Madison County Unified Court system in Madison County, Indiana the 50th Judicial District. Judge Newman is being sued under 42 U.S.C. § 1983 in his individual capacity, and under state law for false imprisonment, for his failure to act administratively (not judicially) in issuing an appropriate document, directed to the Department of Correction ordering the release of Mr. Dawson, pursuant to normal procedures.

4. Defendant State of Indiana, by and through its political subdivision, the Department of Correction (DOC), at all times relevant had control and custody of the Plaintiff Lance Dawson, and continued to have control and custody of Lance Dawson beyond the date of July 18, 2001, the date which the Indiana Court of Appeals ordered his release. The State of Indiana, by and through its political subdivision, the DOC, is being sued under state law for false imprisonment for the acts of its employee agents who, while acting within the scope of their employment, caused the unlawful incarceration of Plaintiff Lance Dawson.

5. Defendant Betty Weist was at all times relevant a Department of Correction Parole Officer who was charged with the supervision and monitoring of the Plaintiff upon his release from prison, and failed to act to terminate his parole supervision, even though she was informed by the decision of the Indiana Court of Appeals that Mr. Dawson should not have been incarcerated. Defendant Weist is sued under 42 U.S.C. § 1983 in her individual capacity.

6. Defendant Victoria Fafata, who supervised Ms. Betty Weist, failed to respond and act to the information provided by Ms. Weist that Mr. Dawson should not be supervised by the Department of Correction Parole Services Division, and in fact should not have been incarcerated at all. Defendant Fafata is sued under 42 U.S.C. § 1983 in her individual capacity.

7. Defendant Arthur Hegewald, was at all times relevant a Supervisor of Parole Services, and even when he was informed that Mr. Dawson should not be supervised by the Department of Correction Parole Services, by virtue of the decision of the Indiana Court of Appeals

entered on July 18, 2001, he failed to take reasonable steps to terminate the supervision of the Plaintiff and even advised Plaintiff's counsel, that it did not matter, as Mr. Dawson's parole would terminate in the near future anyway. Defendant Hegewald is sued under 42 U.S.C. § 1983 in his individual capacity.

8. Defendant Kathy Stoops-Wright was at all times relevant the Clerk of Madison County. She failed to take appropriate ministerial actions upon the docketing of Judge Newman's order calling for Dawson's release, thereby causing Dawson's false imprisonment. Defendant Stoops-Wright is sued under state law for false imprisonment, and is sued under 42 U.S.C. § 1983 in her individual capacity.

III. JURISDICTION

9. This Court has jurisdiction pursuant to the provisions of 28 U.S.C. §1331, this being a suit authorized by 42 U.S.C. § 1983 to redress the deprivation of rights, privileges and immunities secured by the Fourth, Eighth, and Fourteenth Amendments to the United States Constitution. This Court has supplemental jurisdiction to hear and decide Plaintiff's state law theories pursuant to 28 U.S.C. § 1367.

IV. FACTUAL ALLEGATIONS

10. In 1990, Plaintiff, Lance Dawson, pleaded guilty to certain criminal charges. Dawson was sentenced to six years, all of which was suspended, and he was placed on three years probation.

11. In September of 1992, Dawson's probation officer filed a notice of probation violation with the court alleging that Dawson failed to comply with recommendations of the mental health center and failed to abstain from illicit drugs.

12. A hearing was set for December 14, 1992, but was continued by the State due the unavailability of the State's witness and re-set for January 25, 1993.

13. On January 7, 1993, the hearing was continued again by the State and re-set for February 22, 1993.

14. On February 5, 1993, Dawson moved to continue the hearing once again.

15. The Court granted Dawson's motion but never re-set the hearing date.

16. In approximately 1995, Dawson went on disability and started receiving social security benefits.

17. On June 12, 2000, approximately ten years after being sentenced, the State filed an amended notice of probation violation, alleging that Dawson's probationary period had been tolled by the 1992 filing of the notice of probation violation.

18. The amended notice alleged that Dawson also violated his probation by committing new criminal offenses in November 1998 and in May 2000.

19. In a hearing on October 23, 2000, Defendant Madison County Superior Court Judge Thomas Newman Jr., revoked Dawson's probation and sentenced Dawson to six years.

20. After the hearing, Dawson was taken to Plainfield Correctional Facility ("Plainfield").

21. Dawson filed a notice of appeal and was assigned a public defender, Anthony Lawrence, to represent him on the appeal.

22. On December 15, 2000, Dawson was transferred to Otter Creek Correctional Facility in Kentucky due to overcrowding at Plainfield.

23. Beyond Lawrence's initial contact to tell Dawson that he now had appointed counsel for his appeal, Dawson never spoke to Lawrence.

24. On July 18, 2001, based upon a brilliant appellate brief, the Indiana Court of Appeals in *Dawson v. Indiana*, 751 N.E.2d 812 (Ind. Ct. App. 2001), held that the trial court improperly revoked Dawson's probation and ordered his immediate release.

25. A docket entry dated July 18, 2001, by the Honorable Judge Newman ordered Dawson released from Department of Correction.

26. Even though the criminal docket shows that Defendant Judge Newman ordered Dawson's release, he and/or his staff failed to take the necessary administrative steps to ensure his release from DOC.

27. There is no documentation of any order being sent to the Department of Correction.

28. Kathy Stoops-Wright, Clerk for Madison County, also did not send the docketed order to the Department of Correction notifying the agency that it should release Dawson.

29. The Clerk for Madison County failed to send the release order to the Department of Correction despite a statutory duty to do so.

30. The Court was under an obligation to send certified copies of Dawson's modified sentence to the Department of Correction, under IC 35-38-1-16.

31. There was, however, some communication between the Court and the Department of Correction.

32. The same day the Court of Appeals issued its decision ordering Dawson's release, Judge Newman's Court sent a fax to the Department of Correction which included the appellate decision.

33. Thereafter, emails were sent between DOC employees indicating that Dawson was going to be released after his successful appeal.

34. On July 26, 2001, Dawson was transferred back to Plainfield.

35. The inter-facility transfer report indicates that Dawson was being transferred back to Indiana because of "Possible Release on Appeal."

36. Thus, the DOC had notice that Dawson was to be released immediately based upon the July 18, 2001 decision of the Indiana Court of Appeals.

37. Believing that his appeal was still pending, and having not been informed of the Court of Appeals decision, Dawson never questioned his incarceration.

38. Despite the Indiana Court of Appeals ruling and Defendant Judge Newman's order, Dawson remained

incarcerated up to and including September 6, 2002, over a year after his ordered release.

39. Upon his release, Mr. Dawson reported to the parole office in Anderson, Indiana, as directed by DOC, and specifically spoke with Defendant Weist, and informed her soon after his first visit that the Court of Appeals had ordered his release in 2001.

40. Defendant Weist then contacted the court staff of Defendant Judge Newman to inform them of this decision but she received no further instructions from the Court with regard to her responsibility and duties to supervise Mr. Dawson under the standard conditions of parole. She also asked for directions from her supervisor, Ms. Fafata, and was told to continue with the parole supervision.

41. Mr. Dawson was unable to persuade Ms. Weist that he was not to be supervised under parole, and that the Madison County Superior Court should have taken corrective steps to insure that he should not have been incarcerated beyond the Court of Appeals decision of July 18, 2001.

42. Soon thereafter Plaintiff's counsel contacted Ms. Weist and her supervisor Victoria Fafata to learn more about the circumstances of Mr. Dawson's illegal and unlawful imprisonment and the reasons why he was still under DOC supervision.

43. After initially providing some general information, Ms. Weist refused to cooperate without permission and authority from her supervisors.

44. When the office of Plaintiff's counsel contacted Victoria Fafata, she refused to meet with Plaintiff's

counsel to provide additional information and referred the matter to her supervisor, Mr. Arthur Hegewald.

45. On or about September 10, 2003, Mr. Hegewald finally returned several phone messages and indicated that he was not going to meet with Plaintiff's counsel, and that it did not matter because Mr. Dawson's parole would terminate in the near future anyway.

46. Defendants Weist, Fafata and Hegewald willfully, incompetently and indifferently failed to act to terminate the unlawful and unauthorized parole supervision of Mr. Dawson.

V. CAUSES OF ACTION

(STATE LAW CLAIMS)
COUNT I
FALSE IMPRISONMENT

Plaintiff re-alleges and herein incorporates rhetorical paragraphs one (1) through forty-six (46) with the same force and effect as if fully set forth herein, and complains against Defendant Newman, Defendant Stoops-Wright, and Defendant Indiana Department of Correction (DOC) as follows:

47. While incarcerated, Dawson was under the care and supervision of Defendant State of Indiana, Indiana Department of Correction.

48. Because Dawson was incarcerated, Defendant Indiana Department of Correction had a duty to care for him and to release him as ordered by the Indiana Court of Appeals.

49. Defendants failed to exercise reasonable or ordinary care by failing to release Dawson in a prompt manner, thus allowing him to remain incarcerated for fourteen months after he was ordered released, subjecting him to false imprisonment.

50. As a result of this prolonged incarceration, Dawson was denied his liberty interest.

51. The Madison County clerk, Kathy Stoops-Wright, also caused Dawson to be falsely imprisoned.

52. Upon receipt of the Court of Appeals' order reversing the trial court's finding, and upon the docketed entry by Judge Newman ordering Dawson's release, the Clerk of Madison County, in abrogation of her duty under state law, failed to properly notify the Department of Correction of the order granting Dawson's release from custody.

53. The Madison County Clerk's actions were a failure of non-discretionary, ministerial acts.

54. Defendant Newman also caused Dawson to be falsely imprisoned.

55. Defendant Newman failed to act administratively in issuing an appropriate document, directed to the Department of Correction, ordering the release of Mr. Dawson.

Defendant Newman failed to take the appropriate steps to comply with the Court of Appeals decision, and with his own docket entry, and thereby caused Mr. Dawson's unlawful incarceration.

WHEREFORE, Plaintiff requests the following relief:

(a) To award actual damages to Plaintiff to adequately compensate him for his injuries;

(b) To grant such other relief as the Court deems proper.

(FEDERAL CLAIMS)
COUNT II
42 U.S.C. § 1983 CLAIMS
AGAINST INDIVIDUAL DEFENDANTS
FOR VIOLATIONS OF EQUAL PROTECTION,
DUE PROCESS, AND FALSE IMPRISONMENT

Plaintiff re-alleges and herein incorporates rhetorical paragraphs one (1) through fifty-five (55) with the same force and effect as if fully set forth herein, and complains against Defendant Judge Thomas Newman Jr., Defendant Betty Weist, Defendant Victoria Fafata, Defendant Arthur Hegewald, and Defendant Stoops-Wright in their individual capacities, as follows:

56. Defendant Newman failed to act administratively in issuing an appropriate document, directed to the Department of Correction, ordering the release of Mr. Dawson. Defendant Newman failed to take the appropriate steps to comply with the Court of Appeals decision, and with his own docket entry, and thereby caused Mr. Dawson's unlawful incarceration.

57. The Madison County clerk, Kathy Stoops-Wright, also caused Dawson to suffer constitutional injury.

58. Upon receipt of the Court of Appeals' order reversing the trial court's finding, and upon the docketed

entry by Judge Newman ordering Dawson's release, Defendant Stoops-Wright, in abrogation of her duty, failed to properly notify the Department of Correction of the order granting Dawson's release from custody.

59. The Madison County Clerk's actions were a failure of non-discretionary, ministerial acts.

60. Upon release of Plaintiff Dawson from custody of the Indiana Department of Correction, he was to report to the Anderson Parole Office to be supervised.

61. Plaintiff informed Defendant Weist, soon after his initial meeting, that he was wrongfully incarcerated and detained after the Indiana Court of Appeals on July 18, 2001 found that Judge Newman had wrongfully violated his probation and sentenced him to prison.

62. Defendant Weist informed Judge Newman's court of the ruling and received no further instructions with regard to the parole supervision of the Plaintiff.

63. Defendant Weist also contacted her supervisor, Defendant Fafata, who also chose not to take any affirmative steps to insure the immediate release from parole supervision of the Plaintiff.

64. Upon informing the supervisor of Parole Services, Defendant Hegewald, of the unlawful supervision of the Plaintiff, Defendant Hegewald failed to take any affirmative steps to terminate the parole of Plaintiff Dawson.

65. Plaintiff suffered emotional harm, loss of liberty, and fear that he would be re-incarcerated for any violation of the conditions of parole.

WHEREFORE, Plaintiff requests the following relief:

(a) full compensation;

(b) punitive damages and attorney fees; and

(c) costs in this matter.

COUNT III
EIGHTH AMENDMENT VIOLATION

Plaintiff re-alleges and herein incorporates rhetorical paragraphs one (1) through sixty-five (65) with the same force and effect as if fully set forth herein, and complains against Defendant Judge Thomas Newman Jr., as follows:

66. Plaintiff Dawson's prolonged detention beyond the date of his ordered release constituted "cruel and unusual punishment."

67. The Court of Appeals ruling was sufficient for Defendant Newman to be put on notice that Dawson was wrongfully sentenced and should not have faced continued custody in prison after being ordered released.

68. Defendant Newman failed to administratively order the release of Mr. Dawson, and constitutes deliberate indifference.

69. Defendant Newman was informed by DOC parole officer Weist that an order (abstract) was necessary before DOC Parole Services would close/terminate the supervision of Mr. Dawson under standard conditions of parole.

WHEREFORE, Plaintiff requests the following relief:

(a) To award actual damages to Plaintiff to adequately compensate him for his injuries;

(b) To award punitive damages to deter the Defendants from committing similar conduct in the future;

(c) To award attorneys fees and costs; and

(d) To grant such other relief as the Court deems proper.

VI. REQUEST FOR TRIAL BY JURY

70. Plaintiff Lance Dawson hereby requests a trial by jury.

Respectfully Submitted,

/s/ [Michael K. Sutherlin
Michael K. Sutherlin
Attorney for Plaintiff

CERTIFICATE OF SERVICE

I do hereby certify that a copy of the foregoing has been duly served upon all counsel of record listed below by notice of electronic filing pursuant to L.R. 5.8 on this 2nd day of April 2004.

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Respectfully Submitted,

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